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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,178	07/09/2004	Werner Fritz Dubach	F-336	7876
43419 7590 10/16/2008 PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195				
EXAMINER				
MCKINLEY, CHRISTOPHER BRIAN				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,178

Applicant(s)

DUBACH, WERNER FRITZ

Examiner

CHRISTOPHER B. MCKINLEY

Art Unit

3781

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 27 is/are rejected.
- 7) ☒ Claim(s) 15-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6-8, 11-14 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach (2,961,119) in view of Dubach (5,558,239). Leach discloses the limitations of the claims including a plastic closure (fig. 1) comprising a lower part (15), a cap (16), a hinge (17), all of which are manufactured in a closed state (col. 2, line 57) and connected one to another by at least one separation seam (33), the lateral walls of the cap and lower part are arranged on top of one another in a flush manner (fig. 1), said seams connect a guarantee strip to the lower part and the cap (fig. 3, 32), said separation seams run in two planes perpendicular to the central middle axis of the closure (fig. 1) and wherein intermediate elements are separated from the lateral sidewall by a gap (figs. 2 and 3) also connected to the walls by separation seams. Leach excludes what Dubach teaches, a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another (fig. 3, 3), contacting each other at a middle portion following a curved course and sharp bend and the film hinges enclosing two lateral intermediate elements for the purpose of imparting a toggle function to the cap between opening and closing positions. Therefore it would have been obvious to one having ordinary skill in the art at the time

of invention to have modified Leach with a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another, contacting each other at a middle portion following a curved course and sharp bend and the film hinges enclosing two lateral intermediate elements, as taught by Dubach, in order to impart a toggle function to the cap between opening and closing positions.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 2 in view of Mueller et al. (2003/0116879). The references as described in par. 2 disclose the limitations of the claims substantially excluding inward and/or outward formations on the inner surfaces of the closure. However, Mueller et al. teaches inner surfaces of the lateral wall's lower part having inward and/or outward formations (fig. 3, 38) for the purpose of engaging the grooves or beads on the container neck (paragraph 86). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified the references as described in par. 2 with inward and/or outward formations (fig. 3, 38) on an inner surface of the closure, as taught by Mueller, for the purpose of engaging grooves or beads on the container neck.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 2 in view of Harrold et al. (6,631,820). The references as described in par. 2 disclose the limitations of the claims excluding inward and/or outward formations on the outer surfaces of the closure. However, Harrold et al.

teaches inward and/or outward formations on the outer surfaces of the closure (fig. 1, 42) for the purpose of providing vertical support and stability to the closure. Therefore it would have been obvious to one having ordinary skill in the art of invention to have modified the references as described in par. 2 with inward and/or outward formations on the outer surfaces of the closure, as taught by Harrold, in order to provide vertical support and stability to the closure.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 2 in view of Neveras et al. (5,386,918). The references as described in par. 2 disclose the limitations of the claims, as described in par. 5, excluding two separations seams inclined to the central middle axis of the closure. However, Neveras et al. teaches a cap capable of having two separation seams inclined to the central middle axis of the closure (figs. 1 and 2) for the purpose of having varying design shape. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have modified the references as described in par. 2 with a cap capable of having two separation seams inclined to the central middle axis of the closure, as taught by Neveras, in order to have varying design shape.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being obvious over the references as described in par. 2. The references as described in par. 2 disclose the limitations of the claims excluding two separation seams oriented such that they have different inclines with respect to the central middle axis of the closure. However, Leach

does teach a mechanical equivalent to the aforementioned technical feature including two separation seams perpendicular to the central middle axis of the closure. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified the references as described in par. 2 with two separation seams oriented such that they have different inclines with respect to the central middle axis of the closure in order to have varying design options. Moreover a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A Change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

Allowable Subject Matter

7. Claims 15-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 6/30/2008 have been fully considered but they are not persuasive. Applicant contends the combination of Leach and Dubach is non-obvious, since Dubach is allegedly formed in an open state and can not be formed in a closed state. Examiner disagrees.

9. Without conceding the snap hinge of Dubach can only be formed in an open position, it is understood that Leach discloses a plastic closure manufactured in a closed state (col. 2, line 57). Assuming the aforementioned allegation with regard to Dubach is correct, the teaching of production in a closed state is clearly taught by Leach. Additionally, the teaching of a snap hinge via injection molding in a closed state **is not** novel in the art. Brach et al. (5,335,802) teach a snap hinge similar to that of Dubach having two film hinges (fig. 9, 22) that follow a course that centrally approach one another at a middle portion (21) and diverge from one another. Brach et al. also teach that a snap hinge closure cap can be manufactured via injection molding in a closed state (see col. 1, line 31). As such, the combination is feasible, yields beneficial/foreseeable results and is therefore proper.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER B. MCKINLEY whose telephone number is (571)272-3370. The examiner can normally be reached on Monday-Thursday, 7:00 AM - 5:30 PM.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. B. M./
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781